**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ASCENTIVE, LLC, 201 Spring Garden Street, Philadelphia, Pennsylvania, 19123, Plaintiff, v. GOOGLE, INC., 1600 Amphitheatre Parkway, Mountain View, CA 94043, Defendant.	Civil Action No. ___________

COMPLAINT

1. Plaintiff Ascentive, LLC ("Ascentive"), asserts this complaint against defendant Google, Inc. ("Google"), based upon Google's unauthorized use of Ascentive's trademarks in Google's "AdWords" advertising program, Google's failure to address Ascentive's legitimate trademark complaints filed under Google's own trademark complaint procedures, and Google's subsequent refusal to include Ascentive and its affiliate websites in Google's advertising programs and Google's natural internet search listings.[1]

2. Ascentive sells computer software products and generates about 99 percent of its sales revenues online. Between December 2003 and February 2009, Ascentive contracted with Google to participate as an advertiser in Google's AdWords program and to reach Google's vast audience of internet users. During this time, Google failed to respond to Ascentive's efforts to prevent the unlawful use of Ascentive's trademarks by Google and other Google advertisers.

[1] Google both refuses to allow Ascentive to participate in its advertising programs and refuses to list websites operated by Ascentive in Google's "natural search listings," or the primary list of search results displayed to an internet user following a search at the website www.google.com.

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Google's advertising programs and policies violated and continue to violate the Lanham Act and other applicable laws, causing irreparable harm to Ascentive.

3. Instead of ceasing its unlawful conduct in response to complaints by Ascentive, on or about February 27, 2009, Google suddenly and permanently suspended Ascentive's AdWords account, breaching its contract with Ascentive and causing irreparable harm to Ascentive. On or about March 4, 2009, Google also ceased displaying Ascentive's websites in Google's natural search listings.

4. Accordingly, Ascentive requests that the Court preliminarily and permanently enjoin Google from using Ascentive's trademarks and confusingly similar terms in Google's advertising programs, enjoin Google's "suspension" of Ascentive's AdWords account and Google's refusal to include Ascentive's websites in its natural search listings, and grant the other relief requested in Ascentive's prayer for relief, below.

THE PARTIES

5. Ascentive is a limited liability company organized and existing under the laws of Delaware with its principal place of business at 201 Spring Garden Street, Philadelphia, Pennsylvania, 19123.

6. Defendant Google is a Delaware corporation with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California, 94043.

7. Upon information and belief, defendant Google maintains offices at the Collaborative Innovation Center, 4720 Forbes Avenue, Lower Level, Pittsburgh, PA 15213.

8. Upon information and belief, Google advertises, solicits clients, and conducts substantial amounts of business in the Commonwealth of Pennsylvania and within this district.

JURISDICTION AND VENUE

9. This complaint arises in part under the Lanham Act, 15 U.S.C. § 1125 and 15 U.S.C. § 1114.

10. This Court has federal question jurisdiction over these claims pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338(a) and 1338(b). This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367 because those claims are so closely related to the federal claims brought in this complaint as to form part of the same case or controversy.

11. Google is subject to personal jurisdiction in the Commonwealth of Pennsylvania because, on information and belief, Google regularly and systematically directs electronic activity into Pennsylvania with the manifested intent of engaging in business within this district, including the creation, hosting, and offering of fully interactive websites, advertising, email, and other internet-related services within this district, as well as entry into contracts with residents of this district.

12. Venue is proper in this district under 28 U.S.C. § 1391 (b)(2) because a substantial part of the events or omissions giving rise to Ascentive's claims occurred in this district.

13. Venue is also proper in this district under 28 U.S.C. §§ 1391(b)(1) and (c) because Google is a corporation whose contacts would be sufficient to subject it to personal jurisdiction in this district.

FACTS

A. Ascentive's Intellectual Property and Computer Software Products

14. Ascentive develops and sells computer software products that enhance and protect personal computers, including improving system performance, increasing speed, ensuring privacy, and eliminating the threat of spyware.[2]

15. Over the past decade, Ascentive has developed a reputation as a leader in the personal computer software industry. Ascentive has marketed more than a dozen computer software products, receiving accolades from media outlets like *The Wall Street Journal*, *Newsweek*, *Forbes*, Tech TV and NBC.

16. Ascentive is the owner of an invention relating to potential counterterrorism technology for which an application for United States Patent has been filed. This application has been accorded "special" status and expedited review by the U.S. Patent and Trademark Office ("U.S.P.T.O."). In addition, Ascentive is the assignee of three additional pending U.S. patent applications, one of which has been allowed by the Patent Examiner and consequently a granted patent is expected within approximately three to four months.

17. Ascentive owns registrations for the following trademarks, which it uses in connection with its computer software products (collectively referred to as "Ascentive's trademarks"):

ASCENTIVE - Reg. No. 3,091,824 (issued May 16, 2006)
FINALLYFAST.COM - Reg. No. 3,533,775 (issued Nov. 18, 2008)
FASTATLAST.COM - Reg. No. 3,580,255 (issued Feb. 24, 2009)
PC SPEEDSCAN - Reg. No. 3,580,254 (issued Feb. 24, 2009)
SPYWARE STRIKER - Reg. No. 3,580,253 (issued Feb. 24, 2009)
PC SCAN & SWEEP - Reg. No. 3,580,252 (issued Feb. 24, 2009)
ACTIVESPEED - Reg. No. 3,580,251 (issued Feb. 24, 2009)

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[2] Spyware is harmful software used to collect information and data from personal computers, which may be downloaded and installed without the computer user's consent.

WEBROCKET - Reg. No. 2,510,313 (issued Nov. 20, 2001)
LIFE AT THE SPEED OF LIGHT - Reg. No. 2,757,848 (issued Sept. 2, 2003)

Ascentive also owns trademark applications for the following trademarks:

FINALLYFAST – App. No. 77681970 (filed Mar. 3, 2009)
FINALLY FAST – App. No. 77681963 (filed Mar. 3, 2009)
RAMROCKET – App. No. 77625345 (filed Dec. 3, 2008)
WINROCKET – App. No. 77625523 (filed Dec. 3, 2008)
GREENLIGHT GUARDIAN – App. No. 77625710 (filed Dec. 3, 2008)
BEAWARE – App. No. 77625343 (filed Dec. 3, 2008)
WATCH-BY-WEB – App. No. 77625848 (filed Dec. 3, 2008)

See Ascentive's Trademark Registrations and Applications, attached hereto as Exhibit A.

18. Ascentive's trademarks are inherently distinctive.

19. Ascentive has run advertisements for its products and services nationwide, and has also invested heavily in international marketing.

20. Ascentive operates a number of websites where its computer software products are advertised, sold, and made available for download, including:

www.ascentive.com
www.finallyfast.com
www.fastatlast.com
www.pcfinallyfast.com
www.scanyourpc.com
www.pcspeedscan.com
www.greenlightguardian.com
www.activespeed.com
www.ramrocket.com
www.winrocket.com
www.beaware.com

21. Ascentive is a Microsoft-certified partner and its websites are listed on Google's Safe Browsing Diagnostic pages as hosting safe software, not malicious software or "malware," and having no warnings.

22. In addition to its extensive online advertising, Ascentive develops and airs television advertisements that encourage consumers to search for its software products online by brand name, and to subsequently buy and download these products.

23. For example, Ascentive airs television advertisements for its "FINALLYFAST" software, and Google has estimated that 110,000 Google users search for Ascentive's "FINALLYFAST" trademark per month. *See* Printouts from https://adwords.google.com/select/keywordtoolexternal, attached as Exhibit B.

24. In 2008, Ascentive derived approximately 99 percent of its revenues from online sales from its websites.

B. Ascentive's Participation in Google's AdWords Program

25. Google promotes and operates the largest single online advertising business in the world, a business that reaches more than 86 percent of internet users worldwide. *See* Google's Advertising Information Online, Exhibit C.

26. Google's "AdWords" advertising program delivers millions of targeted ads to internet users each day.

27. In 2008, Google generated approximately 99 percent of its revenues from its advertising programs, and its revenues were more than $21 billion.

28. Google sets forth terms governing advertisers' participation in Google's AdWords program in its Advertising Program Terms, which are attached as Exhibit D (hereinafter Google's "Terms and Conditions").

29. Ascentive began participating in Google's AdWords program in December 2003, and participated continuously in the program until around February 27, 2009.

30. In 2008, Ascentive paid Google more than $645,000.00 to participate in Google's AdWords program.

31. The vast majority of internet users searching for Ascentive's products by brand name search for these products at www.google.com, and view the natural search listings and advertisements Google displays in response to their search queries.

32. Even if an internet user attempts to visit Ascentive's websites directly, by typing a website address such as "www.ascentive.com" into the internet browser, the internet user's browser may be designed to display Google results to the internet user instead of taking the person directly to Ascentive's website. Google's willingness to display links to Ascentive's websites in its natural search listings is therefore crucial to internet users' ability to locate Ascentive's websites.

C. Google's Policies Regarding Trademarks

33. When internet users enter search terms at www.google.com, these search terms are treated as "keywords" that trigger the display of certain Google advertisements or "Sponsored Links" along with Google's search results. Customers are directed to the third-party advertisers' websites when they click on these advertisements contained within Google's search results.

34. Google encourages advertisers to use "keywords" to ensure that their advertisements are targeted to a specific group of customers and viewed by those customers.

35. Google explains its use of "keyword advertising" as follows:

> This type of advertising uses keywords to trigger ads. Typically, advertisers select a set of keywords related to the product or service they wish to advertise. The ads are then displayed in relevant places based on those keywords. For example, Google matches advertiser-selected keywords to user search terms on Google.com in order to show relevant ads.

Ex. C.

36. Advertisers need not select their own keywords. Google offers a "Keyword Tool" that supplies advertisers with suggested keywords for any word they enter. *See* http://adwords.google.com/select/KeywordToolExternal, and Exhibit B.

37. For example, if an advertiser would like to attract customers looking for software to increase computer efficiency, the advertiser might type "FAST PC" into Google's Keyword Tool. Google will then suggest keywords such as "FINALLY FAST PC," Incorporating an Ascentive trademark. Ex. B.

38. The advertiser might then decide to select "FINALLYFAST," an Ascentive trademark, as a keyword instead of a keyword such as "FAST PC." As only about 1,300 searches are conducted for "FASTPC" per month, as opposed to the 110,000 searches for "FINALLYFAST," selecting Ascentive's registered trademark would result in higher profits for Google and the advertiser. Ex. B. The advertiser compensates Google based upon the amount of customer traffic the ads generate.

39. The advertiser also can decide to run an advertisement within the content of its Sponsored Link that uses the same text as Ascentive's advertisements for its "FinallyFast" software. The advertiser can refer to "FinallyFast" software in the Google Sponsored Link ad text and make the ad appear to direct consumers to the website www.finallyfast.com.

40. The Google ad may actually direct customers to a website operated by the advertiser, such as www.finallyfastagain.com. Once the customer arrives at the website as a result of the misleading Google ad for "FinallyFast" software, the customer is prompted to buy and download software labeled as "FinallyFast" software, although that software is completely unlike the software developed and sold by Ascentive.

41. Advertisers' use of keywords is unlimited, and Google not only permits, but *encourages* advertisers to select proprietary and registered trademarks as keyword-triggers.

42. Google's use of keywords ensures that Ascentive's competitors can appropriate Ascentive's trademarks to advertise computer software products similar to the products sold by Ascentive and can direct their advertisements to consumers seeking Ascentive's products.

43. Even if the owner of a proprietary trademark, such as Ascentive, contacts Google with a trademark complaint, Google will not curtail advertisers' use of keywords.

44. Google's policy regarding keywords is in bold font on its website:

> **Please note that we will not disable keywords in response to a trademark complaint.**

Ex. C.

45. Google, however, is able to disable keywords if it chooses, and in fact, has previously disallowed advertisers from using proprietary trademarks as keywords.

46. Google policy does not commit to preventing trademark infringement. Google explains that its willingness to "perform a limited investigation of reasonable complaints" exists only "as a courtesy." Ex. C.

47. Google's policy puts the onus on the trademark owner to identify and complain about each infringing use, but even the most vigilant owner of a mark cannot detect all infringing uses online. *Id.*

48. Google's advertising programs not only fail to prevent advertisers from posting advertisements that are likely to cause customer confusion and trademark infringement; instead, Google's programs actually encourage customer confusion and trademark infringement.

D. Ascentive's Trademark Complaints to Google

49. Google's trademark policies state that Google is willing to "investigate" the use of a company's trademarks in ad text and take action to remove trademarks from ad text. Ex. C.

50. Google's Terms and Conditions incorporate Google's Trademark Policies. *See* Ex. C, Ex. D.

51. In its efforts to protect its trademarks online, Ascentive contacted Google repeatedly regarding the misuse of its trademarks in Google's AdWords program. Many of these communications occurred in late 2008 and early 2009. *See* Emails between Ascentive representatives and Google, attached as Exhibit E.

52. For example, on January 30, 2009, Ascentive contacted Google regarding an advertiser displaying the website address "ascentive.updatespc.com" in its Google ad text, indicating to internet users that the link would take the user to the website address or "URL" "ascentive.updatespc.com." Ex. E.

53. This advertisement was triggered by the search keyword "ASCENTIVE".

54. Google refused to take action regarding the ad, stating "we do not investigate URLs as part of our complaint procedure. This is because the use of a URL does not necessarily constitute trademark use, particularly in the case of post-domain paths or subdomains." Ex. E.

55. On March 2, 2009, Ascentive contacted Google regarding an advertisement purporting to offer "Finally Fast" software, the same "Free Trial" offered by Ascentive, and the same "Finally Fast" software "Seen on TV." In the complaint, Ascentive noted its trademark registration for "FINALLYFAST.COM". The ad text stated:

> Finally Fast – Seen on TV
> Fix Annoying PC Errors Quickly!
> Get a Fact Pc in 3 min – Free Trial
> www.FinallyFastAgain.com

Ex. E. *See also* Printouts regarding FinallyFastAgain.com Google ad, attached as Ex. F.

56. This Google advertisement was triggered by the keywords "FINALLYFAST.COM" and "FINALLYFAST" through Google's advertising program. Ex. F. The website FinallyFastAgain.com offered customers software labeled as "FinallyFast" software, and prompted customers to download the software; however, the software was not affiliated in any way with Ascentive.

57. Google also refused to take action regarding this ad, stating: "As previously noted, we will not be able to investigate 'finally fast' at this time because this mark differs too greatly from your actual trademark." Ex. E.

58. Google's conduct willfully violates its own policies regarding trademarks. Ex. C.

59. For example, although Ascentive submitted a complaint to Google regarding its "FinallyFast.com" and "PC Speedscan" registered trademarks, and Google agreed to remove Ascentive's trademarks from Google ad text, Google is still running deceptive ads that include "Finally Fast Com" and "PC Speedscan" in the ad text. *See* Ex. E and June, 2009 Google Printouts attached as Exhibit H.

E. Google's Permanent "Suspension" of Ascentive's AdWords Account and Refusal to List Ascentive's Websites in Its Natural Search Listings

60. On or about February 27, 2009, Google suddenly and without identifying any reason suspended Ascentive's AdWords accounts and refused to run any advertisements paid for by Ascentive.

61. In addition to permanently suspending Ascentive's AdWords account, on or about March 4, 2009, Google ceased including Ascentive's websites in Google's natural search listings.

62. As a result of Google's conduct, Ascentive suffered a severe drop in online sales, and the number of visitors to Ascentive's website www.finallyfast.com, for example, dropped from about 1.9 million visitors per month in January 2009, to about 500,000 visitors per month.

63. Ascentive's records of its website visitor traffic show that Ascentive suffered an immediate loss of ten percent of its recorded internet traffic and referral traffic following Google's ban of Ascentive's websites from Google's natural search listings and Google's advertising programs.

64. Prospective customers' ability to find Ascentive's websites was so impaired that many of Ascentive's marketing efforts became uneconomical. Even customers searching online and intending to buy Ascentive's products in response to Ascentive's marketing efforts could not locate Ascentive's products, and Ascentive was forced to cease some of its advertising as a result, causing a further drop in traffic beyond the initial ten percent drop and causing a further loss of profits to Ascentive. Finally, customers intending to browse directly to an Ascentive website but redirected by their browser through Google were no longer able to reach the Ascentive website despite their desire to do so.

65. Between February 27, 2009 and May 2009, Ascentive repeatedly contacted Google to inquire as to the reason for the suspension of its AdWords account and to try and persuade Google to revoke the suspension.

66. On March 9, 2009, Google responded:

> Unfortunately, we will not be reversing our decision regarding the suspension of your account. Please respect our decision and as noted in our Terms and Conditions, Google reserves the right to terminate advertisements for any reason.

See Correspondence between Ascentive and Google, attached as Exhibit G. Google referenced its Terms and Conditions, attached as Ex. D.

67. Ascentive speculated that Google may have suspended its account due to a dispute with a third party - the operators of the website StopBadware.org - regarding the features of one of Ascentive's software programs and allegations that Ascentive's software programs constituted malware. Between March and May 2009, Ascentive communicated with and successfully resolved the dispute with StopBadware.org. The result was that Ascentive made alterations to its software and its software was removed from the StopBadware.org website. Despite these developments, Google refused to revoke the suspension.

68. On April 28, 2009, Google responded:

> As mentioned in our previous email, your Google AdWords account has been suspended due to multiple policy disapprovals. We are unable to revoke your account suspension, and we will not accept advertisements from you in the future.
>
> Please note that our support team is unable to help you with this issue, and we ask that you do not contact them about this matter.

Ex. G.

69. Although Google stated that the suspension was due to "multiple policy disapprovals," Google never identified any Google policy Ascentive purportedly violated.

70. The undersigned counsel contacted Google's Legal Department on behalf of Ascentive on May 7, 2009. Ex. G.

71. The letter noted that contrary to Google's assertions, Google's Terms and Conditions do not permit Google to permanently suspend an advertiser's account "for any reason." Ex. G.

72. Google responded on May 22, 2009, repeating that the suspension was due to "multiple policy disapprovals" and refusing to reconsider the permanent suspension. Ex. G.

73. Ascentive also contacted Google repeatedly regarding Google's failure to include Ascentive's websites in natural search listings. Google, however, provided no reason for this failure nor did it change its conduct in response to Ascentive's communications.

FIRST CAUSE OF ACTION
TRADEMARK INFRINGEMENT, UNFAIR COMPETITION AND FALSE DESIGNATION OF ORIGIN UNDER THE LANHAM ACT

74. Ascentive incorporates by reference each and every allegation of Paragraphs 1 through 73 above.

75. Ascentive's trademarks are valid and distinctive federally registered trademarks entitled to protection under the Lanham Act.

76. Google uses Ascentive's trademarks in commerce through Google's advertising programs in a number of ways, including (but not limited to): (a) including Ascentive's trademarks, and terms confusingly similar to them, in Google's directory of suggested keywords and Google's "Keyword Tool"; (b) using Ascentive's trademarks as keywords, and encouraging advertisers to select Ascentive's trademarks as keywords with the intention of directing customers to competing websites for profit, even where those websites are deceptive to customers and operated by Ascentive's competitors; and (c) displaying Ascentive's trademarks, and terms confusingly similar to them, in the text and website address displayed to internet users in Google's advertisements.

77. Ascentive did not consent directly or indirectly to Google's use of Ascentive's trademarks in any manner and Ascentive expressed its strong written objection to Google's unauthorized use of Ascentive's trademarks.

78. Google's unauthorized and willful use and sale of Ascentive's trademarks in connection with its advertising programs constitutes a use in commerce that infringes

Ascentive's exclusive rights in its federally registered marks and is likely to cause confusion, mistake or deception as to the source of the goods and services offered.

79. Such actions are also likely to cause confusion as to whether Ascentive is sponsoring, has authorized or is somehow affiliated with the products advertised.

80. Consumers are likely to be initially confused into believing that clicking on Google's keyword-triggered advertisements will lead to Ascentive's websites and Ascentive's computer software. Ascentive's products and the products offered on the third-party websites are related, as are the trade channels and purchasers for such products.

81. Even after accessing the websites associated with keyword-triggered advertisements, consumers are likely to be confused into believing that those websites and any software they contain are associated with, sponsored by, developed by, or otherwise affiliated with Ascentive.

82. Google's unauthorized and willful use of Ascentive's registered trademarks in connection with its advertising programs constitutes trademark infringement, unfair competition and false designation of origin in violation of the Lanham Act, 15 U.S.C. § 1114 and 1125(a).

83. Additionally, Google's refusal to list Ascentive's websites in its natural search listings violates the Lanham Act.

84. Under Section 43(a) of 15 U.S.C. 1125(a),

> [a]ny person who, on or in connection with any goods or services ... uses in commerce any word, term, name, symbol or device ... or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact which ... is likely to deceive as to the affiliation, connection or association of such person with another person, or as to origin, sponsorship or approval of his or her goods, services, or commercial activities by another person ... shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

85. Google's listing and use of other websites and advertisements containing Ascentive's trademarks, without displaying any websites or advertisements affiliated or otherwise associated with Ascentive, constitutes false designation of origin, as defined in the Act. This use occurs in interstate commerce in connection with goods and services and is likely to cause confusion, mistake or deception as to the origin, sponsorship, or approval of goods or services.

86. Google's infringement, unfair competition, and false designation of origin has caused and, unless restrained by this Court, will continue to cause Ascentive irreparable injury.

87. By reason of Google's acts, Ascentive's remedy at law is inadequate to compensate it for the injuries suffered.

88. Google's conduct has damaged Ascentive in an amount to be determined at trial.

SECOND CAUSE OF ACTION
CONTRIBUTORY TRADEMARK INFRINGEMENT UNDER THE LANHAM ACT

89. Ascentive incorporates by reference each and every allegation of Paragraphs 1 through 88 above.

90. Google intentionally and willfully induced third-party advertisers to infringe on Ascentive's trademarks and Google has actual or constructive knowledge that its advertising programs are being used to infringe Ascentive's trademarks.

91. With full knowledge and willful disregard of Ascentive's rights in the trademarks, Google sold the rights to use Ascentive's trademarks as keywords to third-party advertisers through its advertising programs.

92. Google's directory of suggested keywords is intended to encourage third-party advertisers to select the keywords most profitable to Google and the advertisers, even if those keywords are proprietary marks.

93. Google displays and triggers third-party advertisements in a matter that it knows will increase the likelihood of confusion with Ascentive's trademarks.

94. Google has actual or constructive knowledge that its advertising programs cause online shoppers to visit websites unaffiliated with Ascentive and owned by third-party advertisers, even when shoppers are attempting to locate Ascentive's products.

95. Google's conduct is likely to cause confusion, mistake and deception as to whether Ascentive is the source of, or is sponsoring or affiliated with, the products and services offered on third party advertisers' websites.

96. Through its sale of Ascentive's trademarks as keywords to third-party advertisers, and its refusal to remove Ascentive's trademarks from ad text, Google provides such advertisers with aid and materially contributes to the third-party advertisers' violations of the Lanham Act, 15 U.S.C. §§ 1114 and 1125(a).

97. Google is therefore contributorily liable for the infringing use of Ascentive's trademarks by third-party advertisers.

98. Ascentive has been, and absent injunctive relief will continue to be, irreparably harmed by Google's actions.

99. Ascentive has no adequate remedy at law for the foregoing wrongful conduct.

100. Google's contributory infringement has damaged Ascentive in an amount to be determined at trial.

THIRD CAUSE OF ACTION
VICARIOUS TRADEMARK INFRINGEMENT UNDER THE LANHAM ACT

101. Ascentive incorporates by reference each and every allegation of Paragraphs 1 through 100 above.

102. Google has the right, ability and obligation to control the use of Ascentive's trademarks in its advertisements and advertising programs.

103. Third-party advertisers' use of Ascentive's trademarks in Google's advertisements and in the context of Google's advertising programs is likely to cause confusion among consumers, and constitutes infringement of Ascentive's rights in its trademarks.

104. Google receives a direct financial benefit from the third-party advertisers' infringing use of Ascentive's trademarks.

105. Google is vicariously liable for the infringing use of Ascentive's trademarks by third-party advertisers.

106. Ascentive has been, and absent injunctive relief will continue to be, irreparably harmed by Google's actions.

107. Ascentive has no adequate remedy at law for the foregoing wrongful conduct.

108. Google's vicarious infringement has damaged Ascentive in an amount to be determined at trial.

FOURTH CAUSE OF ACTION
COMMON LAW TRADEMARK INFRINGEMENT, UNFAIR COMPETITION AND FALSE DESIGNATION OF ORIGIN

109. Ascentive incorporates by reference each and every allegation of Paragraphs 1 through 108 above.

110. Ascentive owns protected and/or protectable common law trademark rights in its distinct and valuable marks.

111. Ascentive uses its trademarks in commerce and in conjunction with its legitimate business operations.

112. Google's unlawful and willful conduct is likely to create confusion concerning the origin of the goods or services advertised, and constitutes trademark infringement, unfair competition and false designation of origin in violation of Ascentive's trademark rights at common law.

113. Google's common law trademark violations have directly and proximately caused and continue to cause injury and damage to Ascentive by, among other things, causing Ascentive to lose control of its business reputation, causing confusion, diverting customers, sales, and otherwise causing significant commercial loss.

114. As a result of Google's actions, Ascentive has suffered, and will continue to suffer, irreparable harm.

115. Ascentive has no adequate remedy at law.

116. Google's violations of law have damaged Ascentive in an amount to be determined at trial.

FIFTH CAUSE OF ACTION
BREACH OF CONTRACT

117. Ascentive incorporates by reference each and every allegation of Paragraphs 1 through 116 above.

118. Ascentive and Google entered into a contract governing Ascentive's participation in Google's AdWords program.

119. The contract was governed by the Terms and Conditions attached as Exhibit D.

120. Under the contract, Google also was required to abide by its own trademark policies. *See* Google's Trademark Policies, at Exhibit C.

121. In refusing to respond to Ascentive's legitimate trademark complaints, Google failed to abide by its own trademark policies.

122. The contract between Ascentive and Google also does not permit Google to permanently suspend Ascentive's account and preclude Ascentive from running any future ads "for any reason."

123. The Terms and Conditions outline specific "Prohibited Uses" in Paragraph 4, and state that "[v]iolation of the foregoing may result in immediate termination of this Agreement or customer's account without notice and may subject Customer to legal penalties and consequences." Ex. D.

124. Ascentive did not violate any provision of Paragraph 4. To the contrary, Ascentive complied with Google's Terms and Conditions and the applicable policies, regulations, code of conduct and guidelines at all times.

125. Google breached the terms of its contract with Ascentive by: (1) refusing to protect Ascentive's trademarks from online infringement, even where Google agreed under its own policies to do so; (2) permanently suspending Ascentive's account and refusing to accept any advertisements from Ascentive in the future; and (3) refusing to include Ascentive's websites in its natural search listings.

126. As a result of Google's actions and Google's breach of its contract with Ascentive, Ascentive is suffering irreparable harm.

127. Ascentive has been, and absent injunctive relief will continue to be, irreparably harmed by Google's actions.

128. Ascentive has no adequate remedy at law for the foregoing wrongful conduct.

129. Google's breaches of contract have damaged Ascentive in an amount to be determined at trial.

SIXTH CAUSE OF ACTION
INTERFERENCE WITH PROSPECTIVE CONTRACTUAL RELATIONS

130. Ascentive incorporates by reference each and every allegation of Paragraphs 1 through 129 above.

131. Ascentive derives much of its revenues from the online sales of its computer software products to potential consumers.

132. Ascentive has prospective contractual relationships with the internet users that use Google as a search engine.

133. For example, prospective customers searching for "FINALLYFAST", which Google estimated number about 110,000 internet users a month, previously saw displayed a link to Ascentive's www.finallyfast.com website and Ascentive's advertisement for its "FinallyFast" software.

134. As a result of Google's actions, these customers now see displayed only the advertisements and websites of third parties, including competitors of Ascentive that continue to make unauthorized uses of Ascentive's registered trademarks.

135. In banning Ascentive from its advertising programs and natural search listings, Google intended to harm Ascentive by preventing these contractual relationships from occurring.

136. There is no privilege or justification for Google's conduct.

137. As a result of Google's conduct, Ascentive has been, and absent injunctive relief will continue to be, irreparably harmed by Google's actions.

138. Ascentive has no adequate remedy at law for the foregoing wrongful conduct.

139. Google's intentional interference with prospective contractual relations has damaged Ascentive in an amount to be determined at trial.

SEVENTH CAUSE OF ACTION
UNJUST ENRICHMENT

140. Ascentive incorporates by reference each and every allegation of Paragraphs 1 through 139 above.

141. If the relationship between the parties was not governed by an express contract, than in the alternative, Ascentive has a right to recover from Google based on Google's unjust enrichment.

142. Google has knowingly benefited from its use of Ascentive's trademarks in conjunction with its advertising programs.

143. When Ascentive challenged Google's use of Ascentive's trademarks by submitting trademark complaints to Google and attempting to remove infringing Google advertisements, in accordance with Google's own policies, Google unjustly terminated Ascentive's account and ceased including Ascentive's websites in its natural search results.

144. Google has retained the benefits of its use of Ascentive's trademarks, which use is in violation of Ascentive's rights and causes harm to Ascentive, as set forth above.

145. Under these circumstances, as set forth in the complaint, it would be unjust for Google to retain the benefit conferred upon it by its use of Ascentive's trademarks without payment to Ascentive.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Ascentive, LLC, asks for an order and judgment against Google:

a. Awarding Ascentive preliminary and permanent injunctive relief, pursuant to 15 U.S.C. § 1116, that enjoins Google and its officers, partners, agents, subcontractors, servants, employees, subsidiaries and related companies or entities, and all others acting in concert or participating with it or with actual notice of such order from: (i) directly or indirectly selling, offering for sale, or using as keywords Ascentive's trademarks or terms confusingly similar to them; (ii) displaying in the text of any third-party advertisements Ascentive's trademarks or terms confusingly similar thereto, including the displayed website address or URL; and (iii) making any use of Ascentive's trademarks or terms confusingly similar to them unless specifically authorized by Ascentive;

b. Awarding Ascentive preliminary and permanent injunctive relief in the nature of a revocation of Google's "suspension" of Ascentive's AdWords account, and the relisting of Ascentive's websites in Google's natural search listings;

c. Awarding Ascentive costs and attorneys' fees to the full extent provided for by Section 35 of the Lanham Act, 15 U.S.C. § 1117.

c. Awarding Ascentive actual and trebled damages to the full extent allowed under 15 U.S.C. § 1117, in an amount to be determined at trial.

d. Awarding Ascentive actual, compensatory and punitive damages to the full extent allowed by law.

e. Granting such other relief as this Court deems just and equitable.

Respectfully submitted,

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